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ABSTRACT

This handbook provides an overview of federal and Colorado special education laws and special education issues that affect charter schools. An introduction reviews the history of charter schools and both the school choice movement and special education in Colorado. The first major section provides a history of special education statutory and case law requirements for the education of children with disabilities. Among topics covered are key special education legal concepts, confidentiality requirements, disability definitions, and special education funding in Colorado. The second section addresses special education issues for charter schools, including the following: alignment of philosophical orientation and special education; identification, referral and evaluation issues; who provides special education services; low incidence disabilities; who pays for services; transportation; personnel qualifications; charter schools serving children with disabilities exclusively; the inability to waive special education requirements; individualized learning plans versus individualized education programs; appropriate placement; post enrollment; and special education legal liability. The guide ends with eight recommendations for charter school personnel and five recommendations for school districts and their special education directors. An appendix provides references to statutes, regulations, and case law and lists organizational and Web site resources.(Contains 10 references.) (DB)

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COLORADO DEPARTMENT OF EDUCATION

COLORADO CHARTER SCHOOLS SPECIAL EDUCATION GUIDEBOOK

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Colorado Charter Schools and the Education of Children with Disabilities

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Charter Schools and the Education of Children with Disabilities (2d Ed., May 2001), a publication of the Charter Friends National Network (CFNN), served as the base document for this handbook. The chief authors of that document are Elizabeth Giovannetti, LICSW, Eileen Ahearn, Ph.D., and Cheryl Lange, Ph.D. Project FORUM at the National Association of State Directors of Special Education originally published the first edition of that document in 1997. The Colorado Department of Education extends its sincere thanks and appreciation to CFNN and the authors of those pioneering documents for allowing them to be used as the foundation for this Colorado handbook.

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Introduction

Charter schools are fast becoming the most visible form of school choice in the United States. Since 1991, 37 states, the District of Columbia and Puerto Rico[1] have passed charter school legislation. Charter school laws generally allow teachers, parents, community groups, business leaders, and others to open a new public school, or convert an existing public school, with some degree of independence from established school districts.

There are many challenges to starting and maintaining a new school without the traditional infrastructure available through an existing school district or private school organization. One of the challenges is the implementation of special education services.

Consider the following possibilities:

- Personnel at a newly opened charter school believe that they can provide educational services to students with disabilities within the model that they have designed without providing special education. Can they?

- The director of a newly opened charter school has been told that the authorizing school district would provide special education services. What is the responsibility of the charter school in such a case?

- Staff members of a charter school have followed procedures and have identified students in need of special education. How will the charter school receive funding for special education?

- A parent requests additional services from a charter school and tells the school administrator that she will request a due process hearing to obtain the services that she wants for her child. The charter school must obtain legal advice. Who is responsible for the legal fees? Is there another way to resolve the issue?

Each of these scenarios is a realistic possibility for a charter school. These situations can be difficult to manage and may result in financial risks of non-compliance, including compensatory educational services and attorney's fees as well as program disruptions caused by state and federal intervention as a result of complaints. These can be just some of the consequences if staff members are unaware of special education laws and procedures or if they do not have the expertise for providing special education services. Knowing what to expect and the questions to ask in the area of special education is essential for all charter schools.

The purpose of this handbook is to provide an overview of federal and Colorado special education laws and also a framework for those needing information about special

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[1] In depth state and school information can be found at the U.S. Charter Schools website at http://www.uscharterschools.org. This website is sponsored by WestEd and the U.S. Department of Education.

education issues that impact charter schools. Its intended audience includes charter school developers, administrators and staff; school district personnel; and parents of students with disabilities who are or may be attending one of Colorado's public charter schools.

Charter schools and the school choice movement

The first public charter school in the United States opened in Minnesota in 1992. As of December 2001, 2,167 charter schools have opened in 37 states, the District of Columbia and Puerto Rico. Charter schools vary from other school choice options in that they allow interested individuals to open new public schools or convert an existing school to a charter school. There is a wide variability in charter school law at this time such that charter schools operate differently depending upon the state legislation under which the charter schools are approved.

The Federal Charter Schools Expansion Act [2] defines a charter school as a public school that:

(A) in accordance with a specific state statute authorizing the granting of charters to schools, is exempted from significant state or local rules that inhibit the flexible operation and management of public schools;

(B) is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(C) operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized chartering agency;

(D) provides a program of elementary or secondary education, or both;

(E) is nonsectarian in its programs, admissions policies, employment practices and all other operations, and is not affiliated with a sectarian school or religious institution;

(F) does not charge tuition;

(G) is a school to which parents choose to send their children, and that admits students on the basis of a lottery if more students apply for admission than can be accommodated;

(H) agrees to comply with the same federal and state audit requirements as do other state elementary and secondary schools, unless such requirements are specifically waived;

(I) meets all applicable federal, state, and local health and safety requirements;

(J) operates in accordance with state law; and

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[2] 20 U.S.C. §§ 8061 *et seq.* (Federal Charter Schools Expansion Act)

(K) has a written performance contract with the authorized public chartering agency in its state that includes a description of how student performance will be measured by the charter school pursuant to state assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

The orientation of charter schools also varies greatly. Some schools are designed for specific student populations, some provide a unique or specific curriculum, and others are designed with governance and parent involvement components that are integral to their mission. It is beyond the scope of this handbook to provide a detailed explanation of the charter school movement. An excellent source for that information is a book on charter schools by Joe Nathan, which is cited in the bibliography.

Charter schools and special education in Colorado

Colorado first passed enabling legislation, the Colorado Charter Schools Act (CCSA) in 1993.[3] Since 1993, the CCSA has been amended nearly every year. The CCSA defines a charter school as a public, nonsectarian, nonreligious, non-home-based school.[4]

A Colorado charter school:

(A) operates within the school district that grants its charter and is accountable to its authorizing school district for purposes of ensuring compliance with applicable laws, including federal and state special education laws;

(B) is subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, or need for special education services;

(C) is required to make enrollment decisions in a nondiscriminatory manner. A majority of a charter school's students must reside in the school's authorizing school district or in school districts contiguous to the authorizing school district;

(D) operates free from specific school district policies and state law and regulations;

(E) is administered and governed by a governing body in a manner agreed to by the charter school applicant and the local board of education;

(F) may not charge tuition except as is otherwise provided by Colorado law;

(G) is responsible for its own operation, including the preparation of a budget, contracting for services, and personnel matters; and

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[3] Colo. Rev. Stat. §§ 20-30.5-101 *et seq.* (Colorado Charter Schools Act)

[4] Colo. Rev. Stat. § 20-30.5-104(1)

(H) may offer any educational program that may be offered by its authorizing school district unless expressly prohibited by its own charter or by state law.

One advantageous aspect of charter schools is the right to operate without the burden of certain school district policies and state laws and regulations. However, it is essential that everyone involved with charter schools understand that no exemption can be granted from any federal disability law or regulation, including Section 504 of the Rehabilitation Act of 1973 (Section 504),[5] Title II of the Americans with Disabilities Act (ADA),[6] and the Individuals with Disabilities Education Act (IDEA).[7] In Colorado, charter schools must also comply fully with the Exceptional Children's Educational Act (ECEA), which is Colorado's special education law.[8]

How does the CCSA address special education and special needs populations? The CCSA first provides that charter schools are subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability or the need for special education services.[9] Second, the CCSA holds charter schools *accountable* to their authorizing school districts for purposes of ensuring compliance with the IDEA and the ECEA.[10] Consequently, if a charter school fails to comply with the IDEA or the ECEA, its authorizing school district may revoke or non-renew the school's charter.[11]

The CCSA also addresses special education financing. In compliance with the IDEA, a school district is required to provide special education services to students enrolled in its charter schools on the same basis as such services are provided to students enrolled in its other public schools. Under one funding option, each charter school must pay an amount equal to the per pupil cost incurred by its authorizing school district in providing special education services, multiplied by the number of students enrolled in the charter school.[12] Alternatively, the charter school and the school district may negotiate arrangements for the provision of and payment for special education services. If the school district and the charter school have negotiated to allow the charter school to provide the special education services, the school district must direct the proportionate share of state and federal resources generated by students with disabilities to the charter school enrolling those students.[13] If a student with a disability attends a charter school, the school district

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[5] 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973)

[6] 42 U.S.C. §§12101 *et seq.* (Americans with Disabilities Act of 1990)

[7] 20 U.S.C. §§ 1400 *et seq.* (Individuals with Disabilities Education Act)

[8] Colo. Rev. Stat. §§ 22-20-101 *et seq.* (Exceptional Children's Educational Act)

[9] Colo. Rev. Stat. § 20-30.5-104(3)

[10] Colo. Rev. Stat. § 22-30.5-104(2)

[11] Colo. Rev. Stat. § 22-30.5-110(3)(d)

[12] Colo. Rev. Stat. § 22-30.5-112(2)(a.8)

[13] Colo. Rev. Stat. § 22-30.5-112(3)(a)(II and III)

of residence is responsible for paying any tuition charge for the excess costs incurred by the charter school in educating that child.[14]

Although the CCSA unequivocally bars discrimination based on disability and also establishes a framework for funding the delivery of special education services in a charter school, it contains no guidance on *how* students with disabilities should be served once a charter school is established. There are few research findings on the implementation of special education services in charter schools. One study, Project SEARCH, examined special education policies and practices in a number of states, including Colorado.[15] Of the eleven Colorado charter schools visited for the study, five reported that they operated a full-inclusion model, which largely appeared to consist of generic programs of "individualized learning" rather than being based on individualized education programs as required by the IDEA and the ECEA.[16] The remaining charter schools provided "pull-out" special education services.

The study also reported that state, district and school level personnel indicated that charter schools periodically "counsel-out" students with disabilities. "Counseling out" is the practice of discouraging, however subtly, a student with disabilities from enrolling at a charter school. It is a practice that is discriminatory and illegal. General requirements for nondiscriminatory enrollment procedures will be discussed in a later section of this handbook.

Ultimately, Project SEARCH identified four key issues influencing the capacity of Colorado charter schools to deliver special education:

- The "negotiation" factor for determining how to deliver special education in charter schools creates inherent tensions derived from the school district's legal obligations under the IDEA and the charter school's desire for autonomy.
- The application process is the prime opportunity for a charter school and its authorizing school district to address the many details of their relationship.
- Technical assistance is critical to charter schools in developing the capacity to deliver special education.
- Charter school finance, and specifically special education finance, is an ongoing challenge.

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[14] Colo. Rev. Stat. § 22-30.5-112(3)(b)

[15] Project SEARCH is a research study funded by the U.S. Department of Education, Office of Special Education Programs (Grant #H324C980032-99). This study, conducted by Lauren Morando Rhim on behalf of the National Association of State Directors of Special Education (NASDSE), examines what state level policies and practices in seven states (including Colorado) and the District of Columbia influence individual charter schools' capacity to deliver special education services. The Colorado component was conducted between January 1999 and September 2000. Project SEARCH and all other documents pertaining to this study are available on NASDSE's website at http://www.nasdse.org/

[16] The failure to develop and implement an individualized education program (IEP) for each student with a disability in accordance with IDEA and ECEA procedures is a violation of those laws.

A summary of other recent and on-going research efforts on the general topic of charter schools and special education is available online at the U.S. Charter Schools website at http://www.uscharterschools.org. This website is sponsored by WestEd and the U.S. Department of Education.

Because few guidelines or research findings are available, Colorado charter school developers and operators should obtain complete information about federal and Colorado laws and regulations that apply to the provision of special education, just as they must do for other applicable educational requirements. Copies of the IDEA and its regulations governing students with disabilities can be obtained from the U.S. Department of Education's Office of Special Education Programs (OSEP) website, which is located at http://www.ed.gov/offices/OSERS/OSEP/Policy/ Copies of the ECEA and its regulations may be obtained from Colorado Department of Education's (CDE) Special Education Services webpage at http://www.cde.state.co.us./cdesped/index.htm. Other relevant materials are available at the CDE's Special Education Services and Charter Schools webpages[17] and through state and federal resource centers and support organizations.[18]

Issues to consider

Individuals involved in the development or monitoring of charter schools have several issues to consider as they think about special education services in charter schools. Four interdependent questions summarize the major areas:

1) Who is legally responsible for ensuring that students with disabilities enrolled in charter schools receive a free appropriate public education?

In Colorado, the authorizing school district is legally responsible for assuring that students with disabilities enrolled in its charter schools receive a free appropriate public education (FAPE). Charter schools are accountable to their authorizing school districts for compliance with federal and state special education laws, and a school district may revoke or non-renew a charter if the charter school fails to comply with the IDEA and the ECEA. The State of Colorado is ultimately responsible to ensure that every eligible student with a disability in the state receives a FAPE.

2) Who, from a service delivery standpoint, will provide special education services?

Under the IDEA and the CCSA, an authorizing school district is required to provide special education services to students enrolled in its charter schools in the same manner as those services are provided to students enrolled in its other public schools. Within these legal constraints, charter schools and their authorizing school districts may negotiate how special education services are delivered. Currently, three service delivery

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[17] CDE's website is located at http://www.cde.state.co.us

[18] The Colorado League for Charter Schools' website is located at http://www.coloradoleague.org The U.S. Charter Schools website sponsored by WestEd and the U.S. Department of Education, and is located at http://uscharterschools.org

options are available: (1) the school district is responsible for providing all special education services to students with disabilities enrolled at the charter school; (2) the charter school is responsible for providing all special education services, either by hiring its own providers or contracting with third parties to provide those services; or (3) the school district provides certain special education services and the charter school provides the balance. An in-depth discussion of these three models is contained in a later section of this handbook.

3) How are special education services delivered?
One of the first issues to address is how the delivery of special education services will align with the charter school's mission and goals. Other questions to be addressed are *who* will deliver the special education services and *where* will such services be delivered? The answers to these questions are partially dependent on the special education agreements negotiated by the parties. In this context, it is extremely important for charter school administrators to understand that school personnel who are providing special education services must meet the CDE's requirements for special education personnel qualifications.

4) How are special education services funded?
Special education funding involves federal, state and local levels of government. A clear understanding of state policies and procedures is critical for charter school developers and administrators. An in-depth discussion of Colorado public school finance and special education funding is contained in a later section of this handbook.

Each of these questions must be addressed when considering and operating a charter school and implementing programs for students with disabilities. Answers to these questions will affect how special education is delivered at individual charter schools. The answers may well differ depending on the individual charter school and the agreements negotiated by the charter school and its authorizing school district.

This handbook begins with a brief, introductory background on special education law. The rest of the handbook is presented in a question and answer format to enhance access and clarity. Understanding the issues and laws protecting the rights of students with disabilities will help those involved in charter schools to avoid preventable problems in program planning and implementation and also enhance results for students with disabilities attending charter schools.

This handbook provides information on many issues that may arise when charter school staff, school district personnel and parents consider special education in the charter schools. However, it is not an exhaustive review, and readers should consult legal counsel or a special education expert for specific situations.

A Brief History of Special Education

Access to equal educational opportunity and due process was a hard fought battle for children with disabilities and their families. Educational opportunity for children with disabilities has changed dramatically in the last fifty years due to court decisions, legislative initiatives and administrative rulings. As charter schools implement programs

and services for students with disabilities, it is important to understand why the protection afforded by special education laws is so valued and crucial to these children and their families.

For most of our nation's history, children with disabilities were not given the right to the same educational opportunities as was afforded their nondisabled peers. Children with disabilities could be excluded from a public education, and it was not until the 1950s that long-standing educational practices were successfully challenged. In the late 1960s and early 1970s, several federal and state court decisions struck down state laws that denied an equal educational opportunity to students now covered by federal disability laws.

Section 504 of the Rehabilitation Act of 1973 is widely regarded as the first civil rights statute for persons with disabilities. Section 504 requires preschool, elementary, secondary and adult education programs to take into account the needs of disabled students. In 1975, Congress enacted Public Law 94-142, the Education for All Handicapped Children Act. This law required states to adopt goals ensuring full educational opportunity for children with disabilities as a condition of receiving federal funds. This law was designed to make a free appropriate public education (FAPE) available for children with disabilities. It has been amended several times over the years. In 1990, this law was renamed the Individuals with Disabilities Education Act (IDEA).

Statutory and Case Law Requirements for the Education of Children with Disabilities

The IDEA and Section 504 serve as the legal foundation that protects the educational rights of children with disabilities. The IDEA and its regulations[19] provide the procedural road map for teachers, parents, administrators and state educational agencies as they adopt policies and procedures for educating all students. Understanding the IDEA and the legal concepts that are its foundation is essential for all charter school developers and operators as they consider how to provide special education services.

Six major legal concepts for delivering special education

The following six concepts underlie special education statutes, regulations and case law (Fiedler & Prasse, 1996) and form the basis for delivering special education in public schools, including charter schools.

1) Zero Reject

Federal law requires that all children are to be afforded an equal educational opportunity and states may not deny a child an education on the basis of disability. In Colorado, this principle applies to all children ages 3 to 21.

2) Individualized Education Program

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[19] The IDEA's regulations addressing the education of children with disabilities ages 3 to 21 begin at Section 300 in Title 34 of the Code of Federal Regulations (C.F.R.) and are formally cited as 34 C.F.R. §§ 300.1 to 300.756. In this handbook, the IDEA regulations are informally cited (e.g., IDEA Regulations § 300.340).

The IDEA requires that a written statement called an individualized education program (IEP) must be developed in accordance with IDEA regulations for all students identified as having a disability and in need of special education services. In general, the IEP must include current educational levels, annual goals, specific educational objectives, a description of the special education and related services to be provided, dates for initiation of services, anticipated duration of services and evaluation criteria. Other requirements, such as a plan for transition services for each student ages 14 and older, must also be included on the IEP. The rules and regulations[20] implementing Colorado's Exceptional Children's Educational Act (ECEA) parallel IDEA regulations for IEP development and content.

(See IDEA Regulations §300.340-300.350; ECEA Rule 4.02)

3) Free Appropriate Public Education (FAPE)

The term "appropriate" is not specifically defined in the IDEA or the ECEA. Court decisions over the years have determined what is "appropriate" on a case-by-case basis, depending on the unique needs of the student. In *Hendrick Hudson District Board of Education v. Rowley*, the U.S. Supreme Court developed a two-part test for determining whether a child has received a FAPE. First, did the school district comply with the procedural requirements of the IDEA? If so, was the IEP developed through IDEA procedures calculated to confer meaningful educational bene fit? If these requirements are satisfied, then the school district has met its obligations under the IDEA. In *Rowley*, the U.S. Supreme Court also held that the intent of the IDEA was to establish a basic floor of educational opportunity for the disabled child; it was not intended to maximize each disabled child's potential.[21] Colorado law is identical to federal law on this issue.[22] Through mediation or due process procedures, both parents and school districts may challenge the appropriateness of a special education program for a child with a disability.

4) Least Restrictive Environment (LRE)

The IDEA provides that students with disabilities must be educated to the maximum extent appropriate with their nondisabled peers. The law expresses a preference, not a mandate, for educating students with disabilities in regular classes with appropriate supplementary aids and services. The 10th Circuit Court of Appeals, the federal appellate court whose decisions are binding in Colorado, has not yet construed the LRE requirement. However, other federal circuit courts have, and in so doing they have identified several factors to be considered when determining LRE.[23] Although not binding in Colorado, the following factors are instructive:

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[20] The ECEA's rules and regulation are located in Section 301-8 of the Colorado Code of Regulations (CCR). These rules and regulations are formally cited as 1 CCR 301-8, Rules 2220-R-1.00 *et seq.* In this handbook, these rules and regulations are informally cited (e.g., ECEA Rule 4.02).

[21] *Hendrick Hudson District Bd. of Education v. Rowley*, 458 U.S. 176 (1982)

[22] In Colorado, school districts are not required to maximize the potential of any student. All students, regardless of disability, are entitled to an equal educational opportunity.

[23] *Daniel R.R. v. Texas State Board of Education*, 874 F.2d 1036 (5th Cir. 1989); *Oberti v. Bd. of Ed. of the Borough of Clementon School District*, 995 F.2d 5th Cir. 1989) *Roncker v. Walter*, 700 F.2d 1058 (6th Cir. 1983); *Sacramento Unified School District v. Rachel M.*, 14 F. 3d 1398 (9th Cir. 1994).

- Can the disabled child be satisfactorily educated in the regular classroom with the use of supplementary aids and services? If not, has the school district mainstreamed the child to the maximum extent possible?

- How do the educational benefits available to the disabled child in the traditional classroom, with appropriate supplementary aids and services, compare with the benefits available to that student in a special education classroom?

- What are the non-academic benefits to the disabled student from interacting with nondisabled students?

- What will be the likely effect that the child has on the teacher and the children in the regular classroom (i.e., the degree, if any, of disruptiveness)?

5) Due Process and Parental Involvement

Due process considerations are vital to the implementation of the IDEA and the ECEA. Parents must be notified of a school's intent to evaluate their child for special education services, and they must give their consent to an initial evaluation before that process can begin. Parents must also be given a meaningful opportunity to participate in the IEP development process and provide consent to the initial special education placement and provision of services. Consent means that the parents (1) have been fully informed, in their native language or other mode of communication; (2) understand and agree in writing to the plan for assessment or services and to the release of specific records; and (3) understand that their consent must be voluntary and can be revoked at any time prior to the initiation of special education services. However, if a parent revokes consent, the revocation does not negate an action that has occurred after the consent was given and before the consent was revoked. For example, if a parent consents to certain special education services, the parent may not revoke consent for those services once the services have begun. Instead, the parent must use one of the dispute resolution procedures available under the ECEA.

(See IDEA Regulations § 300.500 and ECEA Rule 6.02)

6) Nondiscriminatory Evaluation

There are specific legal requirements concerning the evaluation of children. It is important to understand that IDEA and ECEA evaluation instruments must be:

- provided and administered in the child's native language or other mode of communication;

- validated for the specific purpose for which they are used;

- administered by trained personnel;

- tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient; and

- reflective of the child's aptitude or achievement and not reflective of the child's impaired sensory, manual or speaking skills.

(See IDEA Regulations §300.532 and ECEA Rule 4.01(3))

What is the law regarding the education of students with disabilities?

Federal and state laws govern special education. It is important that charter school personnel be familiar with the IDEA and the ECEA and their implementing regulations and rules. For the most part, ECEA rules mirror IDEA regulations, but ECEA rules do contain some additional and/or more specific requirements.

There are three federal laws with implementing sets of regulations that govern the provision of special education for disabled students. The following is a summary of some of the major points of those federal laws.

Section 504 and the Americans with Disabilities Act

There are two federal laws enforced by the U.S. Department of Education's Office for Civil Rights (OCR) that govern the provision of educational services to students with disabilities. Meeting the requirements of these laws is a condition of receiving any federal financial assistance, including IDEA funds.

Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination on the basis of disability by recipients of federal funds. Section 504 regulations[24] contain free appropriate public education requirements that are similar to IDEA requirements.

Title II of the *American with Disabilities Act of 1990* (ADA) extends Section 504's prohibition against discrimination on the basis of disability to all activities of state and local governments, regardless of whether those entities receive federal funds. This includes school districts that receive federal funds as well as entities such as public libraries that do not receive federal funds.

Individuals who are not eligible for services under the IDEA may nevertheless be entitled to the protections afforded by Section 504 and the ADA. Colorado charter schools are subject to both Section 504 and the ADA.

Individuals with Disabilities Education Act (IDEA)

Public Law 94-142, originally named The Education for All Handicapped Children Act, was passed in 1975. Its most recent changes were contained in the 1997 amendments to the law, followed by a revised set of regulations in 1999.

The purposes of the IDEA are:

- to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living;

- to ensure that the rights of children with disabilities and their parents are protected;

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[24] Section 504 regulations are located at 34 C.F.R. §§ 104 *et seq.*

- to assist states, localities, educational service agencies and federal agencies to provide for the education of all children with disabilities;

- to assist states in the implementation of state-wide, comprehensive, coordinated, multidisciplinary, interagency systems of early intervention services for infants and toddlers with disabilities and their families;

- to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

- to assess and ensure the effectiveness of efforts to educate children with disabilities.

The IDEA provides federal funds to assist states and localities in the education of children with disabilities. In order to receive the funds, states must ensure that:

- All children with disabilities ages 3 to 21 have available to them a FAPE, including students who have been suspended or expelled;

- Education will be based on a complete, non-discriminatory individual evaluation;

- An individualized education program (IEP) will be provided for each child with a disability;

- Children will be educated in regular education classes with their nondisabled peers, with appropriate supplementary aids and services, to the maximum extent appropriate;

- Parents must give informed consent for an initial evaluation, initial placement and re-evaluation; they must be notified of any change of placement that may occur in their child's educational program; and they must be invited, along with other required school personnel, to meetings to develop their child's IEP;

- Parents have the right to initiate a complaint or request mediation or a due process hearing to challenge any decision regarding the identification, evaluation, or educational placement of their child. In Colorado, parents may also request a due process hearing regarding the school's failure to obtain written parental consent prior to conducting an initial assessment and/or prior to providing the child initial special education services. The due process hearing decision may be appealed to a state-level administrative law judge, whose decision may then be appealed to an appropriate Colorado court or federal court;

- Parents have the right to examine their child's educational records. The IDEA contains confidentiality requirements inclusive of those set forth in the Family Educational Rights and Privacy Act of 1974 (FERPA);[25]

- Clear communication to parents that special education and related services are provided at no cost to them; and

- School systems will carry out a systematic search (referred to as Child Find) for every child with a disability in need of special education and related services.

Because charter schools are defined as public schools in Colorado, they are subject to the requirements of the IDEA. The IDEA's 1997 amendments specifically address the topic of charter schools. The 1999 IDEA regulations applicable to Colorado charter schools provide as follows:

- Relevant to all types of charter schools:

  - ✓ Representatives of private schools and public charter schools must be included on the state advisory panel.

- Relevant to charter schools that are part of an existing school district (the legal scheme in Colorado):

  - ✓ States must ensure that school districts serve students with disabilities enrolled in charter schools in the same way that they serve such students in their other schools and provide funds to their charter schools in the same way as they provide funds to their other schools.[26]

(See IDEA Regulations § 300.312)

What qualifications must charter school special education staff possess?

Although charter schools may obtain state and district waivers for the qualifications of regular education personnel, this is not the case for special education teachers and related services providers. Under both the IDEA and the ECEA, all personnel providing special education services to students with disabilities must meet state requirements. Special education teachers must hold a Colorado teacher's license with appropriate endorsements in special education, and the endorsement must be appropriate for the age being taught. Related services personnel must hold Colorado special services licenses with appropriate endorsements. There may be certain professions approved by the CDE for which CDE licenses are not available. For those areas where CDE licensure and endorsement are not

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[25] 20 U.S.C. § 1232g (Family Educational Rights and Privacy Act of 1974)

[26] The IDEA also makes reference to charter schools that are independent educational agencies. In this context, the IDEA defines the term "local educational agency" (LEA) and makes charter schools that are independent LEAs eligible for state sub-grants. It allows states to require an LEA charter school to establish eligibility jointly with another school district if the charter school is unable to effectively meet the needs of students with disabilities. The IDEA also makes these charter schools eligible to apply for projects under state discretionary funds.

available, appropriate professional licenses, registration or credentials are required, subject to CDE approval. Charter school administrators should contact the CDE to determine which professions are licensed or otherwise approved by the CDE.

If, after making reasonable efforts, the charter school is unable to employ a qualified individual, the charter school, through the authorizing school district's special education director, may apply for temporary teacher eligibility (TTE). The individual for whom a TTE is sought must already possess a Colorado educator's license or emergency authorization. A TTE is effective for three years and is non-renewable. During the three-year period, the individual with a TTE must apply to and make satisfactory progress in a program to obtain an appropriate educational endorsement.

(See IDEA Regulations § 300.23; ECEA Rule 3.04)

What are the ground rules for confidentiality under the IDEA and the ECEA?

Parents have the right to examine their child's education records. The IDEA contains confidentiality requirements that include those contained in the Family Educational Rights and Privacy Act of 1974 (FERPA). Although FERPA does not protect the confidentiality of educational information in general, it does prohibit the improper disclosure of information from education records and generally protects student and family privacy regarding information contained in those records. Information contained in education records may not be disclosed to third parties without obtaining the prior written consent of the parent or eligible student over 18 years of age, unless one of the exceptions to the prior written consent requirement is applicable. In Colorado, ECEA rules parallel IDEA regulations regarding records and confidentiality requirements.

(See IDEA Regulations §§ 300.560 through 300.577 and ECEA Rule 6.01)

How is disability defined under the ECEA?

The IDEA and its regulations establish 13 categories of disability.[27] It is important to be familiar with the federal categories of disability and to understand that Colorado's disability categories set forth in the ECEA are derived from and are consistent with the federal categories. Colorado public school administrators and staff (including charter school developers, administrators and staff) and parents of children with disabilities will be working most closely with Colorado disability categories. Those disability categories are:

- physical disability
- vision disability
- hearing disability

[27] The federal disability categories are: mental retardation, hearing impairment, speech or language impairment, visual impairment, serious emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, deaf-blindness and multiple disability. See 34 C.F.R. § 300.7.

- significant limited intellectual capacity
- significant identifiable emotional disability
- perceptual or communicative disability
- speech-language disability
- multiple disabilities
- preschool child with a disability
- infant/toddler with a disability

(See ECEA Rule 2.02)

What steps must schools follow to provide special education services to a student with a disability?

The following is a summary of the general steps that are prescribed by the IDEA and the ECEA.

1) Initial Assessment

An initial assessment or evaluation is conducted when a student is suspected of having a disability. As is the case with traditional public schools, charter schools have an obligation to "locate and identify" children with disabilities under the Child Find requirements of the IDEA. The initial assessment must be a comprehensive and individual evaluation in all areas related to the suspected disability. Prior to conducting the initial assessment, the child's parents must be notified in writing of their procedural safeguards and of the types and reasons for any assessments that may be conducted. In Colorado, the parents also must be given the opportunity for a face-to-face conference with school personnel in the primary language of the parent before the assessment is performed. As was discussed above, the informed written consent of the parents must be obtained prior to the assessment. Parents, students or school personnel may request an initial assessment.

(See IDEA Regulations § 300.532 and ECEA Rule 4.01(3)(a-c))

2) Assessment Process

A multidisciplinary team must conduct assessments in all areas related to the child's suspected disability. The team members must be appropriately licensed and endorsed. For those professions for which a CDE license is not available, appropriate professional licenses, registration or credentials are required, subject to CDE approval. In Colorado, assessments must include the areas of cognitive functioning, social/emotional functioning, physical functioning, communicative functioning, educational achievement and life skills/career/transitional performance. The results of the evaluation must be based on more than a single procedure or assessment, and tests must not be discriminatory on a racial, cultural, ethnic, gender or religious basis.

(See IDEA Regulations §§ 300.532 through 300.543 and ECEA Rule 4.01(3)(d-i))

3) Assessment Results

The multidisciplinary team reviews the assessments results to determine eligibility for special education services. This team must include at least one teacher or other specialist with knowledge in the area of the suspected disability. Parents must be given a meaningful opportunity to attend the eligibility meeting and also to consult with the team prior to determination that their child has a disability.

(See Idea Regulations § 300.534 and ECEA Rules 4.01(4))

What is an individualized education program (IEP) and how is it implemented?

The IDEA defines the term "individualized education program" as "a written statement for a child with a disability that is developed, reviewed, and revised" in an IEP team meeting. The term "IEP" is used in many ways: the IEP team, the IEP team meeting, the IEP process, and the IEP document. The overall IEP requirements have a number of purposes and functions:

- The *IEP meeting* serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are based on evaluations, what services will be provided to meet those needs, and what the anticipated outcomes may be.

- The *IEP team* is a group of required participants including the child (if appropriate), the parents, a regular educator, the special education director or designee, a person with authority to make building level decisions regarding service delivery, a special education teacher or service provider of the child, and certain school personnel who, collectively, (1) have expertise in the area of the child's suspected disability, (2) have information relevant to the functioning, achievement and performance of the child, (3) are knowledgeable about the results and meaning of assessment information, and (4) are knowledgeable about service delivery options. The composition of the IEP team may vary depending on the purpose of the meeting.

  (See IDEA Regulations § 300.344 and ECEA Rule 4.02(3) for IEP team membership requirements)

- The *IEP process* provides an opportunity for resolving any differences between the parents and the school concerning the special education needs of the child -- first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents and the school.

- The *IEP document* sets forth in writing a commitment of resources necessary to enable a child with a disability to receive needed special education and related services. It is a management tool that is used to ensure that each child with a disability is provided special education and related services appropriate to the child's unique needs. The IEP document is also a compliance/monitoring document that may be used by authorized monitoring personnel from each governmental level to determine whether a child with a disability is actually receiving the FAPE agreed to by the parents and the school. Finally, the IEP document serves as an evaluation device for use in determining the extent of the child's progress toward meeting projected outcomes.

IEP meetings are particularly important to ensure that the student's needs are discussed fully by parents and school personnel so that informed decisions can be made about the child's instruction and services. An IEP document must include the following information:

- a statement of the child's present level of functioning, achievement and performance;
- statements of the child's educational needs;
- a statement of the child's disability and the criteria utilized to determine the child's inability to receive reasonable educational benefit from regular education;
- a statement of how the child's disability affects the child's progress in the general curriculum, or for a preschool child, as appropriate, how the disability affects the child's participation in appropriate activities;
- statements of measurable annual goals and short-term instructional objectives;
- statements of how the child's progress toward annual goals and objectives will be measured and how the child's parents will be regularly informed of their child's progress (which must be at least as often as when parents of nondisabled students are informed of the progress of their children);
- statements of specific special education and related services, transition services, and supplementary aids and services;
- projected dates for initiation of services and the anticipated duration of services;
- recommendations for where the services will be provided and the extent to which the child will participate in regular education programs;
- documentation of the determination and description of special transportation needs, if any, of the child;
- a communication plan if the child has a hearing disability;
- a literacy modality plan if the child has a vision disability;
- documentation of strategies and supports considered by the IEP team if the child's behavior impedes or is likely to impede his or her learning or the learning of others;
- documentation of the child's need, if any, for assistive technology;
- a statement specifying whether the student shall achieve the content standards adopted by the school district in which he or she is enrolled, or whether the

student shall achieve individualized standards indicating that the student has met the requirements of his or her IEP;

- a description of modifications that will be provided to the child;
- a statement of any individual modifications of state or district-wide assessments that the student will need in order to participate in the assessments, or a statement explaining why any assessment is inappropriate for the child; and
- an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular classroom.

(See IDEA Regulations §300.347 and ECEA Rule 4.02(4) for specific IEP content requirements)

What are related services?

Related services are supportive services to assist a child with a disability to benefit from special education. Related services and, if indicated, the need for assistive technology services or devices (e.g., an item, piece of equipment, or product used to increase, maintain, or improve functional capabilities of children with disabilities) are often determined at the IEP meeting and documented on the IEP. If related services are required, the school must provide them at no cost to the parent. Related services include:

- transportation
- speech-language pathology
- audiology
- psychological services
- physical and occupational therapy
- recreation, including therapeutic recreation
- early identification and assessment of disabilities in children
- counseling services, including rehabilitation counseling
- orientation and mobility services
- medical services for diagnostic or evaluation purposes only
- social work services
- parent counseling and training

(See IDEA Regulations § 300.24)

Are students with disabilities re-evaluated?

A *review* of the IEP to determine whether goals have been met must be conducted at least annually, at which time a new IEP is written for the next year. A *re-evaluation* must take place at least every three years after placement in special education. At the point of re-evaluation, the IEP team decides if formal re-testing is needed to develop an appropriate IEP. Re-evaluations may be conducted more frequently if requested by the teacher, staff, parents, or if conditions warrant a re-evaluation.

(See IDEA Regulations §§ 300.532 through 300.536 and ECEA Rule 4.01(3)(j))

What if parents do not want their child to receive special education services or disagree with a recommended service?

Parents can deny permission to have their child evaluated or to initially receive special education by denying consent in writing and submitting it to the school. In Colorado, if parents refuse to consent to an evaluation for eligibility purposes, the school district may not proceed with the disputed evaluation. It can pursue the evaluation or placement by requesting a due process hearing or other dispute resolution methods such as mediation. Parents must be notified if the school decides that it will continue to seek the evaluation or placement through dispute resolution procedures.

If parents disagree with recommended instruction and services and the IEP cannot be agreed upon through the IEP process, parents can (1) consult with staff members about the IEP; (2) request an IEP review; (3) request a negotiation or mediation with the school; (4) use the state complaint procedures; or (5) initiate an impartial due process hearing.

(See IDEA Regulation §§300.505-300.510; ECEA Rule 6.03)

What are transition services and how are they implemented?

The IDEA and the ECEA require that the IEP team consider the need for transition services for students with disabilities beginning at age 14. IEPs must state the transition services needs of the child, with a focus on the child's course of study. Beginning at age 16, or younger if appropriate, a statement of needed transition services, including the responsibilities of the school and any outside agency for providing or paying for transition services, must be included on the IEP. Transition services are defined as a coordinated set of activities for a student with a disability that is designed within an outcome –oriented process and that promotes movement from school to post-school activities.

(See IDEA Regulations § 300.29 and Rule 4.02(4)(g)(i))

How is special education funded in Colorado?

Understanding how special education is funded in Colorado first requires a basic understanding of Colorado public school finance.

1) Total program and categorical funding

Colorado's public schools receive funding from a variety of sources. Most revenues to Colorado's 178 school districts are provided through the Colorado Public School Finance

Act of 1994 (as amended).[28] This legislation provides moneys via state taxes, local specific ownership (vehicle registration) taxes and local property taxes.

Funding is based on an annual October pupil count. Each school district counts pupils in membership as of the school day nearest October 1st (the official count day). Districts are given an 11-day window in which to establish student enrollment in order to provide an opportunity to include students who may be absent on the official count day.

Funding to school districts is based on a per-pupil formula that calculates the Total Program for each district. For each pupil funded in the October 1 pupil count, the formula provides a base per-pupil amount of money plus additional money to recognize district-by-district variances in cost of living, personnel costs and district size. The Total Program amount also includes additional funding for at-risk pupils. As these components vary among school districts, so do the expenses of the districts, resulting in differences in the amount of Total Program funding provided. A school district's per pupil revenue (PPR) is determined by dividing the district's Total Program by the district's total funded pupil count for the year. Increased funding is also provided to recognize that expenses among districts vary as pupil populations vary, especially at-risk populations.

Funding for a school district's Total Program is provided first by two local sources of revenue – property taxes and specific ownership taxes. These local sources of revenue are referred to as the "local share." If the local share is insufficient to fully fund the district's Total Program, then state moneys (referred to as the "state share") fund the shortfall. State share moneys come primarily from state income taxes and sales and use tax revenues.

Each school district individually has the discretion, within the limits of existing law, to determine how its Total Program moneys are spent, with the following three exceptions:

- Instructional Supplies and Materials: Each school district must budget a specific amount of money per pupil for instructional supplies and materials. The actual amount is determined each year by the legislature and may vary from year to year.

- Capital and/or Insurance Reserves: Most school districts must budget a minimum of $248 per pupil, not to exceed $800 per pupil, for capital reserves or for insurance reserves/other risk management activities. However, this revenue is optional for any district with existing capital reserves in excess of $1,240 per pupil (i.e., 5 years of the minimum allocation requirement).

- Programs for At-Risk Pupils: Each school district must allocate at least 75% of its at-risk funding to school or district-wide instructional programs for at-risk pupils or to staff development associated with teaching at-risk pupils in the district.

In addition to the Total Program funding, school districts may also receive state funding to pay for specific programs designed to serve particular groups of students or particular

[28] Colo. Rev. Stat. §§ 22-54-101 *et seq.* (Public School Finance Act of 1994)

student needs. Such programs are often referred to as "categorical" programs. The main categorical programs are English language proficiency education; gifted and talented education; small attendance centers; special education; transportation; and vocational education. If a school district is able to fund its entire Total Program using only its local share and the minimum amount of state share, the district must fund its categorical programs by increasing its property tax mil levy.

2) Special education funding

In Colorado, special education is funded by a combination of sources. Federal funds obtained through grants under the IDEA are distributed, on a per pupil basis, to *administrative units* (i.e., school districts and boards of cooperative services) where, in most cases, the funds are shared across the administrative unit. State categorical special education funding under the ECEA is distributed, on a per pupil basis, directly to administrative units.

IDEA funding. Under the IDEA, a prescribed statutory formula is used to distribute funds. First, the formula sets a base amount that each administrative unit and state-operated program will receive. This base amount remains constant from year-to-year. Eighty-five percent of the dollars above the base amount are allocated according to the numbers of elementary and secondary students with disabilities in each administrative unit or state-operated program. The remaining fifteen percent is allocated according to the numbers of disabled children in poverty within each administrative unit and state-operated program.

Administrative units must submit an application for IDEA funds. The application must contain a narrative describing how the funds will be used, a list of all staff to be employed through the funds, and a budget. Administrative units must obtain prior approval from the CDE for use of IDEA funds, and IDEA funds must be used to supplement State and local funds.

Other federal funds. There are several other possible sources of federal funds, including Vocational Education, Vocational Rehabilitation, and Impact Aid. These funds are not distributed to administrative units from the CDE.

ECEA funding. Under the ECEA, a statewide base allocation in the amount of $49,800,756 is distributed to each administrative unit in proportion to the amount of ECEA funding that the administrative unit received for the 1994-1995 fiscal year divided by the statewide appropriation for the 1994-95 fiscal year. Each year these payments are made in September, but payment to an administrative unit will be delayed until the administrative unit's required student, staff, revenue and expenditure data are submitted to the CDE.

Any increase in the appropriation over the $49,800,756 base amount is distributed to individual school districts in July, which is the beginning of each fiscal year. The increased appropriation is divided by the total number of children with disabilities reported by all administrative units on the previous December 1 count to determine an amount of funding per child. This per child amount is then multiplied by the December 1

count for each school district to determine each district's share of the increased appropriation.

Other funds. Other sources of funds include State funds from the Division for Developmental Disabilities, and payments from one administrative unit to another. Administrative units that participate in the Medicaid program may use some of these funds for special education programs with certain limitations.

Federal funding under the IDEA constitutes approximately 10% of the overall cost of special education programs. Less than 20% of special education is funded with ECEA funds. Approximately 70% of special education is funded through a school district's general fund, which is based on its Total Program. Consequently, charter schools should plan on subsidizing special education services out of their general fund by at least 70%.

3) The general framework for charter school financing

As was briefly discussed earlier, the Colorado Charter School Act (CCSA) establishes the framework for charter school funding. Specifically, each charter school and its authorizing school district must negotiate funding under the charter at a minimum of 95% of the district's PPR for each pupil enrolled in the charter school. The school district may choose to retain up to 5% of the district's PPR as payment for the charter school's portion of central administrative overhead costs incurred by the school district. The CCSA specifically defines the cost items that can be included in administrative overhead. As a part of this funding formula, the charter school is required to transfer a specified amount for each student enrolled into accounts that the charter school can use only for capital reserve and risk management purposes.

The proportionate share of moneys generated under federal and state categorical aid programs, including IDEA and ECEA funds, must also be directed to charter schools serving students eligible for aid in compliance with the federal Charter Schools Expansion Act. Additionally, each school district must provide federally required educational services to students enrolled in its charter schools on the same basis as such services are provided to students enrolled in its other public schools.

4) Special education financing for Colorado charter schools

In Colorado, the authorizing school district retains ultimate legal responsibility for special education in charter schools, but the manner in which special education services are delivered in charter schools is one of many issues that are negotiated between a school district and its charter schools.

In compliance with the IDEA and the CCSA, an authorizing school district is required to provide special education services to students enrolled in charter schools on the same basis as such services are provided to students enrolled in its other public schools. If the charter school is allowed to provide special education services, the authorizing school district must direct a proportionate share of state and federal resources generated by students with disabilities to the charter school enrolling those students. The CCSA essentially establishes three distinct models for special education funding for charter schools:

A) *Insurance model.* Under this model, the school district is the primary service provider. The charter school pays the authorizing school district a fee on a per pupil basis equal to the per pupil cost incurred by the school district in providing special education services, multiplied by the total number of students enrolled in the charter school. Per pupil costs vary by school district. This model has appealing characteristics and also raises some concerns:[29]

- It provides a level of confidence that legal requirements are being met.
- The charter school derives benefit from the school district's expertise as well as access to school district services and placements for students with intense needs.
- It assures legal protection to the charter school if parents challenge the services provided.
- It provides predictability in budgeting for special education programming.
- The charter school does not have to hire its own special education staff.
- Special education programming is consistent with that provided by other public schools in the school district.
- It provides access to district-sponsored training and staff development related to special education.
- Special education professionals hired by the school district but working at the charter school must answer to two supervisory entities.
- If special education services are provided on an "as needed" basis, special education staff are not on-site at all times to serve as a resource to teachers and students.
- District staff assigned to charter schools may not always share the charter school's philosophy. This concern could be diminished if the district invites the charter school to participate in the hiring/selection of the special education providers that the district assigns to the school.

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[29] Information on funding models was obtained from *The State of Charter Schools In Colorado: 1999-2000*. This Report, a publication of the Colorado Department of Education, covers the 57 charter schools that were in operation for at least 2 years as of the end of the 1999-2000 school year.

B) *Contract model*. Under this model, the charter school hires its own special education staff and/or contracts with third parties. This approach, too, has advantages and concerns, including:

- The contract model may be less expensive than paying the school district's "insurance premium" for special education services. It could also be more expensive depending on the nature of the disabilities involved.
- The school district loses control over how charter school students with disabilities are being served but remains legally liable for providing a free appropriate public education to those students.
- This approach supports increased autonomy from the school district.
- School-based planning facilitates the close involvement of parents and implementation of a full inclusion model.
- Contracting with third parties on a needs-basis allows the school to buy services tailored to students' individual needs.
- In inclusive settings, special education teachers are able to work with many students in the classrooms and not just those on IEPs.

Charter school boards and developers considering this model who do not have a background in special education or experienced special education staff should be careful to contract only with third parties who are competent and qualified in special education in the special education area. A school district that agrees to this model will find it essential to insist on the right to conduct periodic audits throughout the school year to ensure that the charter school's special education providers are qualified and that the charter school is compliant with special education requirements.

C) *Combination model*. As its name suggests, under this model the charter school provides some services and the school district provides the balance. The concerns and incentives listed, above, may apply to a greater or lesser degree. Additional considerations include:

- This model is quite flexible in that each party can identify the critical areas of importance to it (i.e., control, autonomy, risk exposure, etc.) and then negotiate for those values.
- This approach provides an opportunity for interaction and relationship building between the school and its chartering district.
- The school's collaboration with the school district brings a greater depth of expertise and a broader range of resources, which enhances the quality of special education services.

- Collaboration allows the school to balance its interest in autonomy with the benefits of centralized coordination of services to students.

- The charter school can hire special education providers who understand and support the school's unique program and philosophy and assign these providers based on student needs.

- This approach allows the school to offer integrated services to students with disabilities.

It is imperative that charter school developers and administrators learn how special education funds are handled in their school districts. They must also determine what conditions they must meet in order to receive special education funding. Payment of special education funds usually involves documentation of services, personnel, and related services. Setting up a resource management system is important when dealing with the reimbursement of special education funds. Authorizing school districts may have an accounting system or software programs that the charter school may, or is required, to use. Some charter schools have hired consultants to assist in the development of a system for fund reimbursement. It can be quite complicated and time consuming, and the advice of an experienced educational administrator or business manager can save the charter school considerable time and resources.

Many services, including the cost of some types of consultants, are allowable expenditures of IDEA funds. Understanding which expenses can be reimbursed, at what rate, and what information must be documented is an important part of operating a charter school. It is always helpful to remember that the intent of the IDEA and the ECEA is to ensure that children with disabilities receive a FAPE.

What are the essential components of a special education program that charter schools should consider?

Below is a summary of some of the elements of special education that may be helpful for charter schools to consider when establishing special education services for students with disabilities. They are identified as starting points for serving students with disabilities attending charter schools. Whether these components are available within the charter school or in conjunction with its authorizing school district will depend on the school's charter, which should contain all negotiated agreements with the school district.

Identification: the continuous and systematic effort to identify, locate and evaluate students ages 3 to 21 who are in need of special education services.

Referral: a formal process for reviewing information related to students who are suspected of having disabilities and show potential signs of needing special education and related services. Assessment referral is the process of looking at all relevant educational information and making a decision about whether to conduct a formal educational assessment.

Assessment: the process of utilizing formal and informal procedures to determine specific areas of a child's strengths, needs and eligibility for special education services.

Service delivery: the system to ensure that a continuum of alternative placements is available to meet the needs of students with disabilities with special education and related services and that LRE issues are considered in placement decisions.

Staffing: refers to the identification of required and qualified personnel to deliver special education and related services in accordance with the student's IEP.

Facilities: the actual locations of schools and classrooms and the settings that allow students with disabilities to access programs and interactions with nondisabled students.

Parental involvement and rights: refers to parental rights and responsibilities in accordance with the IDEA, the ECEA and their regulations in all aspects of planning and implementing a FAPE for students with disabilities. Parental rights and responsibilities also include any legal challenges to the evaluation, planning and implementation of an IEP or the provision of a FAPE.

Personnel development: the structure for personnel planning that focuses on pre-service and in-service needs in order to plan a program that meets the needs of students with disabilities.

Interagency relations: refers to the collaboration and coordination of agencies to provide services to pupils with disabilities.

Transportation: refers to transportation for students with disabilities, which is necessary in order for the students to benefit from the special education and related services identified on the students' IEPs. In this context, transportation is a related service and must be provided at no cost to the parents.

Instructional resources: refers to the specific supplies, equipment, and instructional materials appropriate to meet the needs of individual students with disabilities.

Coordination with other educational programs: the process that schools or school districts use to provide special education within the context of all other educational programs.

Fiscal resources: the means for purchasing and/or obtaining the supplies, materials, equipment, services and personnel required to provide programs for students with disabilities.

Reporting: refers to the data and financial accounting that must be submitted to state and federal agencies, and supporting documentation that provides the required information for an audit.

Governance: the administrative structure and long-range plans through which the special education system operates.

What about laws pertaining to the civil rights of students attending charter schools?

Under federal and state law, a charter school may not discriminate on the basis of disability or the need for special education services. The Colorado Charter Schools Act (CCSA) specifically requires charter schools to use nondiscriminatory enrollment practices. Authorizing school districts are responsible for ensuring that their charter schools are complying with federal and state civil rights laws.

Charter school developers and administrators must develop nondiscriminatory recruitment and admission practices. Outreach and recruitment efforts should be targeted toward all segments of the community, including students with disabilities.

A charter school may not deny admission to students with disabilities solely because they may need special education and related services. Instead, the school must give students with disabilities the opportunity to meet minimum admission criteria, consistent with the school's mission and civil rights laws.

If more students apply for admission than can be accommodated, the school must use a lottery to make initial enrollment decisions. Once a student on an IEP is selected through a nondiscriminatory admissions process, an IEP team must be convened to make appropriate programmatic and placement decisions for the child. The practice of "counseling out" -- informally discouraging parents from enrolling their disabled child in the charter school -- is illegal. The child's IEP team must make all placement decisions.

In May 2000, the Office for Civil Rights (OCR), in its role of enforcing Section 504, published a document entitled *Applying Civil Rights Laws to Public Charter Schools: Questions and Answers*. This publication answers civil rights related questions that charter school leaders are asking regarding the students whom they serve. The major areas covered in this document are:

- Responsibility for civil rights compliance
- Recruitment and admissions
- Schools affected by desegregation plans or court orders
- Selection of facilities to provide access to students with disabilities
- Educating students who are limited English proficient
- Educating students with disabilities

To access a copy of this publication in its entirety, please visit the U.S. Charter Schools website at http://www.uscharterschools.org/pub/uscs_docs/fr/civil_rights_sub.htm. It is essential that charter school operators be familiar with the information contained in this publication.

What about student discipline?

IDEA regulations addressing the discipline of students with disabilities are complex and sometimes confusing. Key student discipline provisions may be summarized as follows:

- School personnel can remove a student with a disability for up to 10 consecutive school days for violations of the school code of conduct, to the same extent that nondisabled students are disciplined, without the removal constituting a change of placement.

- The student may be removed for additional periods of not more than 10 consecutive school days each in the same school year for separate incidents of misconduct as long as those removals, when viewed as a whole, do not constitute a change of placement. However, beginning on the 11th day of removal in the same school year, and for all remaining days of removal in the same school year, the school is required to provide the student with special education services to the extent necessary to enable the student to appropriately progress in the general curriculum and advance toward achieving the goals set forth in the child's IEP.

- A disciplinary removal that is longer than 10 consecutive days in a school year constitutes a change of placement. A change of placement also occurs when the child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of other factors.

- In the case where school officials are considering removing a child for more than 10 consecutive days in a school year (e.g., long term suspension or expulsion), the student's IEP team must be convened first in order to determine whether the behavior in question is a manifestation of the child's disability. If the behavior is a manifestation of the child's disability, the school may not discipline the child. If the behavior is not a manifestation of the child's disability, then the school may discipline the child in the same manner as it disciplines nondisabled students. However, the school must continue to provide the child with special education and related services that will enable the child to appropriately progress in the general curriculum and advance toward achieving the goals in his or her IEP.

- School personnel can order a change of placement of a child with a disability to an appropriate interim alternative educational setting (IAES) for up to 45 calendar days for misconduct involving dangerous weapons, illegal drugs or controlled substances. The services provided in the IAES must enable the child to continue to progress in the general education curriculum, and to continue to receive those services and modifications that will enable the child to meet his or her IEP goals, including those services described in the child's IEP.

- When school officials remove a child for the 11th day in a school year, the child's IEP team must be convened to either (1) review and revise, as necessary, the

child's existing behavior intervention plan, or (2) develop a plan for conducting a functional behavioral assessment and a resulting behavior intervention plan if the child does not already have one. A functional behavioral assessment is a process for gathering broad and specific information about a student's behavior in order to identify the behavior's function or purpose. It is the first step in developing a behavior intervention plan. A behavior intervention plan identifies specific strategies to teach the child new and more appropriate behaviors. In the student discipline context, specific timelines apply to the development and review of behavior intervention plans.

- If school personnel believe that a child is a danger to himself/herself or to others, they can ask a due process hearing officer in an expedited due process hearing to remove the child to an IAES for up to 45 calendar school days. The 45-day period may be extended if the hearing officer agrees that the child continues to be substantially likely to injure himself/herself or others if returned to the prior placement.

- School personnel can report crimes committed by students with disabilities to appropriate law enforcement and judicial authorities.

- School personnel can always ask a court for a temporary restraining order to protect other students or school staff from harmful behaviors.

(See IDEA Regulations §§300.121 and 300.519 through 300.529)

ISSUES FOR CHARTER SCHOOLS IN THE IMPLEMENTATION OF SPECIAL EDUCATION

How charter school laws and special education laws interact and are jointly implemented raises several issues for charter school developers and operators. The State has the ultimate responsibility for ensuring the provision of a FAPE for each student with a disability residing in Colorado.

Below is a list of questions that those involved with charter schools should consider as they design and establish their schools. There are no conclusive answers to some of these questions. For some questions, specific answers are not yet available; for others, the answer depends upon Colorado's charter school laws. These questions do raise important issues. Their careful consideration may help charter school developers and administrators find appropriate direction for the proper implementation of the IDEA and the ECEA.

What is the school's philosophical orientation toward serving students with disabilities?

By their very nature, charter schools have a particular orientation toward the delivery of educational services that may be manifested in a specific curriculum, student population, or parent focus. Before opening, charter school personnel must ask themselves how they intend to serve students with disabilities. Laws protecting the rights of students with

disabilities do *not* prescribe a particular delivery model or methodology. As discussed in previous sections of this handbook, it is critical for the school to comply with the IDEA and the ECEA and assure that there is no discrimination (based on disability status or the need for special education) for educational services. If a charter school complies with the IDEA and the ECEA, it can develop a model for special education delivery that is both legally sufficient and consistent with its mission.

Ideally, special education should be considered from the start of the school's design in order to align the school's mission for all children. Viewing special education within the context of the charter school's mission may move the whole school toward a more innovative model of educational delivery. Some of the questions that charter school operators should ask themselves are:

- Are unique opportunities available for students with disabilities to receive services within the school's innovative model?
- Can the charter school use its independent status to create innovative models of special education delivery consistent with the IDEA and the ECEA?

How will staff identify, refer and evaluate students with disabilities?

It is important that the charter school has a process in place for the identification of students with disabilities as well as the ability to provide the services contained in the IEPs of students with disabilities who enroll in the school. On this point, charter schools must respond to:

- Who is responsible at the school for identification?
- How will students be evaluated?
- What role will the authorizing school district play in the identification of students with disabilities?
- How will the charter school deal with an IEP developed by another school or school district?
- Who will make decisions about special education services?
- Will an IEP team be in place prior to the opening of the school to deal with evaluation questions and concerns?

Who will provide special education services?

Those interested in opening a charter school should determine how the law is being interpreted in Colorado with regard to responsibility for serving students with disabilities. Although the Colorado Charter Schools Act (CCSA) allows this issue to be negotiated, some school districts interpret the IDEA to require school districts to provide the services. If this issue is negotiable, agreements regarding the provision of services

should be specific and negotiated prior to the opening of the charter school in order to alleviate any confusion over responsibility. Charter school personnel should seek the best advice to determine responsibility for service delivery and have a plan for providing services. Some questions to be answered are:

- Who is responsible for the identification of children with disabilities at the charter school?
- Who will conduct the assessments?
- Is there a list of approved assessment instruments?
- Will funds be available to conduct the assessments, including payment for the cost of the assessment instruments?
- Who is responsible for delivering special education and related services?
- Where will the services be provided (e.g., at the charter school or another site)?
- Whose staff will provide services?
- Can the delivery of services be shared with the authorizing school district or does the school need to provide all services?
- Will the authorizing school district provide assistance in organizing the charter school's special education financial management system?

What steps must charter schools take to ensure that appropriate services are provided to students with low-incidence disabilities?

Some students with disabilities that are considered low incidence (e.g., deafness, blindness, autism, etc.) may enroll in the charter school. Providing services for these individuals, when the school is often small and with limited resources, may be difficult. Again, it is necessary to receive clarification from the authorizing school district about providing services to students with low incidence disabilities.

The importance of having an IEP team in place to consider identification and program questions is again apparent. Often, charter schools do not have special education staff. It may be in their best interest and the best interest of the students with and without disabilities for charter schools to consider special education teachers as part of their personnel team or consultative staff. A knowledgeable special educator can help answer these questions or ask district and CDE personnel necessary questions about special education services.

Who pays for services?

Who pays for the services associated with the education of students with disabilities is often an issue. It is extremely important for charter school developers and operators to

communicate with the authorizing school district when determining special education services. Because federal, state and local funds do not cover the total costs of implementing an IEP, charter schools may be left with the responsibility of covering the excess costs. If the charter school has negotiated services or payment for services with the authorizing school district prior to operation and has planned for the management of the funds, many potential problems can be avoided.

If the charter school staff or designated consultants are not familiar with special education funding requirements and the linkages between other federal and state funding sources (e.g., Title I), they may lose a considerable amount of financial resources that are necessary to operate the school efficiently. The funding of special education is complex for those without experience in the area. It would be extremely helpful for charter schools to receive assistance in this area from the authorizing school district, the CDE, or others knowledgeable about special education.

How will transportation needs be met?

The IEPs of some students with disabilities contain transportation services. Determining who is responsible for the costs and logistical arrangements for transportation is important for charter schools to consider. Is transportation the responsibility of the resident school district, the charter school or the parents? Does the charter school arrange for transportation? Are there funds available for the reimbursement of transportation costs? If so, will these be received by the charter school or the transportation provider? Because charter schools are choice schools, do parents waive transportation services when they enroll their child in a charter school? What about transportation costs when special education or related services are being provided at a location other than the charter school?

What personnel licensure issues need to be considered?

One of the issues to be resolved for charter schools is the availability of special education staff. Often related services staff in the areas of speech/language and psychological services, as well as special education teachers, are in demand by many schools and school districts. Charter school personnel should be aware that they may need to develop relationships with a number of schools, school districts and/or consulting personnel in order to satisfy their need for specialized staff.

If the charter school does not have a special educator on staff, are there other options available to the school? Can a consultant be hired to do assessments? Will services be delivered directly or on a consultative basis? What if the IEP calls for more intensive services? How will the charter school provide these services without a licensed special educator on staff? Charter schools may want to consider a dual licensed staff member (licensed in special education with appropriate endorsements and in another discipline) or outside contractors who have appropriate qualifications or licensure.

Understanding the Colorado requirements concerning staff licensure and special education is important for charter school personnel. The IDEA and the ECEA require that a person knowledgeable about the student's suspected disability be involved with the

evaluation process. Special education teachers and services providers must meet CDE licensure and endorsement requirements. Colorado requirements for special education teachers and services providers are discussed in an earlier section of this handbook.

Can charter schools serve only students with disabilities?

At this time, there is one Colorado charter school that serves solely students with disabilities. If charter developers are considering a charter school that serves only students with disabilities, they should still be mindful of the requirement that charter schools, as part of the education system, must follow non-discriminatory admission practices. Consideration must also be given to how the LRE (least restrictive environment) requirement for each student will be met.

Can charter schools receive waivers for certain special education requirements?

In Colorado, the answer is "no." States cannot waive federal special education laws, and the CCSA does not allow for the waiver of any part of the ECEA.

What if the charter school has individualized learning plans for all students? Does the school still need to develop an IEP for each student with a disability?

In order to comply with the IDEA and the ECEA, a school must follow the procedures outlined in these laws and their implementing rules and regulations. It is possible that those requirements may be met by incorporating them into an individualized learning program for a child with a disability. Again, the specifics of complying with this aspect of the IDEA and the ECEA is a topic that should be addressed by charter school developers and operators in consultation with their authorizing school districts and the CDE.

What if a charter school is not an appropriate placement for a child with a disability?

If a parent seeks to enroll a child with a disability in a charter school, FAPE must be made available to that student at the charter school, or another program that is appropriate for the student must be offered by the entity responsible for educating the disabled student. Enrollment of a student in a charter school is a placement that must be made within the IEP process. If a charter school believes that it is not the appropriate program for the student, it should go through the IEP process to discuss the needs of the student. Through this process, an appropriate educational placement and program can be determined. An IEP review meeting scheduled immediately after enrollment can assist parents, teachers, and students in meshing the child's needs with the charter school's services. Such a meeting cannot be designed to screen out the child with a disability but it is a strategy to better prepare the school to meet the child's needs.

What if a child's special education needs change after enrollment in a charter school?

Student needs may change after enrollment in a charter school. If parents, school personnel, or the student believe that the student no longer requires special education services or the level of services previously provided, an IEP meeting must be initiated or a re-evaluation can be conducted. It is through these procedures that programming and placement must be evaluated and changed.

Is the charter school legally liable for providing special education?

In Colorado, charter schools are accountable to their authorizing school districts for complying with federal and state special education laws. Charter school personnel need to understand the implications of the school's charter and negotiated agreements regarding special education. For example, if a parent initiates a due process hearing about a child's program, a charter school may be required to expend funds or make insurance claims for the legal defense. Charter schools that fail to admit and educate children with disabilities may be liable for compensatory educational services, damages claims, and the attorneys' fees of the parents.

CONCLUSIONS AND RECOMMENDATIONS

A long history of exclusion of children with disabilities from public schools has resulted in federal and state legislation intended to ensure that students with disabilities receive a free appropriate public education, including due process and procedural protections. Federal and state special education laws are designed to protect children with disabilities and their parents, and also provide a blueprint for ensuring that each child's educational program is individually designed and appropriate to the unique needs of the child.

As a result, educators must be aware of federal and state special education laws and their many requirements. For many charter school personnel, this is new territory. They must establish a system for educating all students, regardless of disability status, in their school, often without the assistance of a larger, experienced special education department.

The following recommendations and suggestions are offered for charter school developers and school district personnel:

For charter school personnel:

- Consider special education and the charter school's philosophical orientation and mission in relation to staffing, service delivery, inclusion practices, etc., when writing the charter application or planning the school's goals and objectives.

- Utilize the resources of the U.S. Department of Education and the CDE to learn about special education and charter schools, including the Colorado Charter Schools Act, the Individuals with Disabilities Education Act, the Exceptional Children's Educational Act, and their implementing rules and regulations.

- Contact the special education director in your authorizing school district early in the process to learn how special education funding and the delivery of special education services work in that district.

- Foster positive relationships with school district personnel, including the district's special education director.

- Develop special education policies prior to opening the school.

- During the charter application process begin discussions with the school district regarding which entity will provide special education services. If the charter school will provide the special education services, determine which individual staff members or third parties will provide these services before opening the school. For a school already in operation, prompt investigation of this issue may be essential.

- Consider using a qualified consultant or hiring a qualified staff member to assist in setting up procedures for evaluation teams and financial reimbursements.

- Be consistent in the delivery of educational services for all students and be innovative in special education as well. The laws do not prescribe specific service delivery strategies, nor do they preclude new ways of service delivery.

For school districts and especially their special education directors:

- Be prepared and willing to answer questions from charter school developers and administrators regarding special education services and funding.

- Have information available for charter schools personnel that can help them understand the complex topic of special education and funding in your district.

- Include charter school personnel in special education training that the district makes available to its staff.

- Include charter schools when you share new information and updated materials with your principals and special education staff.

- Foster positive relationships with charter school administrators and special education staff. This may include assigning a knowledgeable staff person to serve as a liaison with the charter schools in your district.

This handbook has summarized some aspects of the charter school movement, many issues that arise when charter schools consider special education and students with disabilities, the rationale behind the laws protecting students with disabilities, and many of the important procedures necessary to ensure equal educational opportunity. There are many challenges in starting a new school, including the areas of curriculum, finance, enrollment and staffing. The provision of special education is another challenge that staff face as they open and operate a charter school.

The information presented here is intended to assist school district personnel, charter school developers, operators and staff, and parents of students with disabilities understand the issues that face Colorado charter schools in the provision of special education. By knowing more about the law and the challenges, all stakeholders will be better able to meet the unique needs of students with disabilities attending charter schools.

APPENDIX: USEFUL SOURCES OF INFORMATION

STATUTES AND REGULATIONS

20 U.S.C. §§ 1400 *et seq.* (Individuals with Disabilities Education Act)
34 C.F.R. §§ 300 *et seq.* (IDEA Part B regulations for children ages 3-21)
34 C.F.R. §§ 303 *et seq.* (IDEA Part C regulations for children from birth through age 2)

29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973)
34 C.F.R. §§ 104 *et seq.* (Section 504 regulations)

42 U.S.C. §§ 12101 *et seq.* (Americans with Disabilities Act)
35 C.F.R. §§ 101 *et seq.* (ADA regulations)

20 U.S.C. § 1232g (Family Educational Rights and Privacy Act of 1974)
34 C.F.R. § 99 (FERPA regulations)

Colo. Rev. Stat. §§20-22-101 *et seq.* (Colorado Exceptional Children's Educational Act)
1 CCR 301-8, Rules 2220-R-1.00 *et seq.* (ECEA rules)

CASE LAW

Hendrick Hudson District Bd. of Education v. Rowley, 458 U.S. 176 (1982)

Daniel R.R. v. Texas State Board of Education, 874 F.2d 1036 (5th Cir. 1989)

Oberti v. Board of Ed. of the Borough of Clementon School District, 995 F. 2d 1204 (3rd Cir. 1981)

Roncker v. Walter, 700 F.2d 1058 (6th Cir. 1983)

Sacramento Unified School District v. Rachel H., 14 F.3d 1398 (9th Cir. 1994)

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ORGANIZATIONS & WEBSITES

Colorado Department of Education
201 East Colfax Ave.
Denver CO 80203-1799
Phone: 303.866.6600
Fax: 303.830.0793
http://www.cde.state.co.us

Colorado League of Charter Schools
7700 W. Woodard Drive
Lakewood, CO 80227
Ph. 303.989.5356
Fax 303.985.7721
http://www.coloradoleague.org

United States Department of Education
http://www.ed.gov

Office for Civil Rights/Denver Office
303.844.5695 Fax 303.844.4303 TDD 303.844.3417
email: **OCR_Denver@ed.gov**

Office of Special Education and Rehabilitative Services
http://www.ed.gov/offices/OSERS/index.html

Office of Special Education Programs
http://www.ed.gov/offices/OSERS/OSEP/index.html

Mountain Plains Regional Resource Center (Maintained by OSEP)
Utah State University
801.752.0238

U.S. Charter Schools
http://uscharterschools.org

Charter Friends National Network
1295 Bandana Blvd., # 165
St. Paul, MN 55108
Phone: 651.644.6115
Fax: 651.644.0433
http://www.charterfriends.org

National Association of State Directors of Special Education
1800 Diagonal Road, Suite 320
Alexandria, VA 22314
Phone: 703.519.3800
Fax: 703.519.3808
TDD 703.519.7008
http://www.nasdse.org

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